

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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|---------------------|---|---------------------|
| LARRY COFFMAN, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 4:06CV01027 ERW |
| |) | |
| ALAN BLAKE, et al., |) | |
| |) | |
| Defendants. |) | |

ORDER AND MEMORANDUM

This matter is before the Court upon the application of Larry Coffman for leave to commence this action without payment of the required filing fee. See 28 U.S.C. § 1915(a). Upon consideration of the financial information provided with the application, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. Therefore, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis at any time if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if "it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief may be granted if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Jackson Sawmill Co. v. United States, 580 F.2d 302, 306 (8th Cir. 1978).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 112 S. Ct. 1728, 1733 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The complaint

Plaintiff, a civilly-committed resident of the Missouri Sexual Offender Treatment Center ("MSOTC"), seeks monetary, declaratory, and injunctive relief in this action brought pursuant to 28 U.S.C. § 1983. The named defendants are Alan Blake (SVP Facility Administrator), Jon Rosenboom ("Facility Director"), Marty Bellew-Smith ("Security Therapy Dr. Aid for Mental Health"), and Linda Meade ("Therapy Aid").

Plaintiff alleges that "the policy that prohibits individuals in a Forensic Program from creating or accessing an e-mail account and the policies that place restrictions on [an] individual's use of the internet are invalid due to the fact that they were not properly promulgated under the Missouri Administrative Procedure Act."

Plaintiff's allegation that an MSOTC policy relative to internet usage was not promulgated according to Missouri state administrative procedures does not state a § 1983 claim. See Williams v. Hopkins, 130 F.3d 333, 337 (8th Cir. 1997)(alleged violation of state law does not by itself state claim redressable by § 1983 action); Bagley v. Rogerson, 5 F.3d 325, 328-29 (8th Cir. 1993) (allegation of state law violation, statutory or decisional, does not, in itself, state claim under federal Constitution or § 1983). Therefore, the Court concludes that the instant action is legally frivolous.

In accordance with the foregoing,

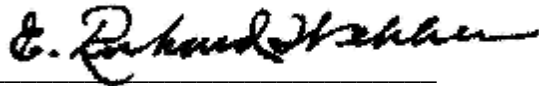
IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff's motion to appoint counsel [Doc. #3] is **DENIED**, as moot.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint, because the complaint is legally frivolous and/or fails to state a claim upon which relief may be granted. See 28 U.S.C. § 1915(e)(2)(B).

An appropriate order shall accompany this order and memorandum.

So Ordered this 12th Day of October, 2006.

A handwritten signature in black ink, appearing to read "E. Richard Webber", written over a horizontal line.

E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE